



# High Speed Rail (West Midlands - Crewe) Act 2021

## 2021 CHAPTER 2

### *Reinstatement and environmental works*

#### **45 Compulsory acquisition of land for relocation of an undertaking**

- (1) If the whole or part of any undertaking is displaced, or is likely to be displaced, as a result of the exercise of any power under this Act, the Secretary of State may acquire land compulsorily—
  - (a) for the relocation of the undertaking, or
  - (b) in a case relating to part of an undertaking—
    - (i) for the relocation of the displaced part, or
    - (ii) for the purpose of providing land in substitution for the site of the displaced part.
- (2) For the purposes of subsection (1), the whole or part of an undertaking is displaced if the site on which it has previously been carried on is no longer reasonably capable of being used for the purposes of the undertaking.
- (3) The Acquisition of Land Act 1981 (which makes provision about a compulsory purchase to which that Act applies, including provision about the authorisation of a purchase and the assessment of compensation) applies to the compulsory acquisition of land under this section.
- (4) In relation to a compulsory acquisition under this section—
  - (a) section 234 of TCPA 1990 (disposal of land) and section 236 of that Act (extinguishment of rights) apply as they apply where land is acquired as mentioned in those sections,
  - (b) sections 238, 239 and 241 of TCPA 1990 (use and development of consecrated land, burial grounds and open spaces) apply as if, in subsection (1)(a) of each of those sections, for “for any purpose for which he acquired the land” there were substituted “, or by any other person, for any purpose for which the land was acquired”, and

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- (c) section 245 of TCPA 1990 (modified application of Acquisition of Land Act 1981 and Compulsory Purchase Act 1965) applies as it applies where land is proposed to be acquired as mentioned in that section.
- (5) Sections 238, 239 and 241 of TCPA 1990 also apply as mentioned in subsection (4) (b) where land is acquired by the Secretary of State, otherwise than under this section, for a purpose for which land may be acquired under this section.
- (6) The power to acquire land compulsorily under this section includes power to acquire an easement or other right over land by creating a new easement or right.
- (7) The power under this section, so far as relating to compulsory acquisition by virtue of subsection (6), includes power to acquire a right for the benefit of a person other than the Secretary of State.
- (8) Section 13(2), (3) and (5) of, and Part 2 of Schedule 1 to, the Local Government (Miscellaneous Provisions) Act 1976 (application of compulsory purchase legislation) apply to a compulsory acquisition by virtue of subsection (6) as they apply to an acquisition of rights by virtue of section 13(1) of that Act.
- (9) In this section, “undertaking” includes a business or facility.
- (10) In section 49 of the High Speed Rail (London - West Midlands) Act 2017 (which makes provision corresponding to that made by this section), after subsection (6) insert—
  - “(6A) The power under this section, so far as relating to compulsory acquisition by virtue of subsection (6), includes power to acquire a right for the benefit of a person other than the Secretary of State.”

#### **46 Power to carry out reinstatement works**

- (1) The nominated undertaker may, where the operation or use of the whole or part of an undertaking is discontinued or substantially impaired as a result of the exercise of any power under this Act, carry out reinstatement works within the Act limits.
- (2) For the purposes of this section, “reinstatement works” means works for the purposes of or in connection with the reinstatement (whether on the same site or otherwise) of the whole or part of the undertaking in question.
- (3) Where the power under subsection (1) is exercised for the purpose of carrying out temporary reinstatement works, it may be further exercised for the purpose of carrying out permanent reinstatement works.
- (4) In this section, “undertaking” includes a business or facility.

#### **47 Planning permission: works involving reinstatement of undertaking**

- (1) The Secretary of State may direct that section 17(1) (deemed planning permission for development authorised by this Act) does not apply in relation to development consisting of—
  - (a) particular reinstatement works, or
  - (b) a particular scheduled work, where the construction of the work is for the purposes of or in connection with the reinstatement (whether on the same site or otherwise) of the whole or part of a relevant undertaking.

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- (2) An undertaking is a “relevant undertaking” if the operation or use of the whole or part of the undertaking is discontinued or substantially impaired as a result of the exercise of any power under this Act.
- (3) Where a direction under subsection (1) has effect in relation to development, the Secretary of State may direct—
  - (a) that planning permission for the development is deemed to be granted under Part 3 of TCPA 1990, subject to such conditions as may be specified in the direction (but see subsection (6));
  - (b) that, where the development has deemed planning permission under paragraph (a), such person as may be specified in the direction is to be treated as also being authorised to carry out the development.
- (4) The provisions of TCPA 1990 (other than section 92 and Part 12) apply in relation to deemed planning permission under subsection (3)(a) as if it had been granted by the Secretary of State on an application referred to the Secretary of State under section 77 of that Act.
- (5) Where development authorised by subsection (3)(a) consists of the carrying out of reinstatement works, section 18 (time limit on deemed planning permission) applies in relation to the development as it applies in relation to development consisting of the construction of a scheduled work.
- (6) The power in subsection (3)(a) does not apply in relation to development which—
  - (a) is likely to have significant effects on the environment by virtue of factors such as its nature, size or location,
  - (b) is not exempt development within the meaning of the Environmental Impact Assessment Regulations, and
  - (c) is not covered by an environmental assessment in connection with the High Speed Rail (West Midlands - Crewe) Bill.
- (7) The Secretary of State must—
  - (a) publish any direction under subsection (3)(a) in such manner as the Secretary of State thinks appropriate, and
  - (b) give copies of any such direction to—
    - (i) the owners and occupiers of the land to which the deemed planning permission relates, and
    - (ii) the unitary authority or, in a non-unitary area, the district council in whose area the development to which the direction relates is or is to be carried out.
- (8) Where development in relation to which a direction under subsection (1) has effect is carried out by a person other than the nominated undertaker—
  - (a) section 10(1) of the Compulsory Purchase Act 1965 (compensation for injurious affection) has effect, in relation to land injuriously affected by the execution of the works, as if for “acquiring authority have” there were substituted “ person carrying out the works has ”;
  - (b) section 6 of the Railways Clauses Consolidation Act 1845 (as applied by paragraph 4(1) of Schedule 28) has effect as if references to “the company” were to the person carrying out the works.
- (9) Directions given under this section may revoke or vary previous directions under this section.

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- (10) In this section, “reinstatement works” and “undertaking” have the same meaning as in section 46.

#### **48 Enforcement of environmental covenants**

- (1) This section applies where—

- (a) a covenant relating to land is made between a person interested in the land (the “promisor”) and the Secretary of State,
- (b) the covenant imposes on the promisor—
  - (i) an obligation (which may be an obligation to make payments) relating to the carrying out, maintenance, protection or enhancement of relevant environmental works in respect of the land, or
  - (ii) a prohibition or restriction relating to the use of the land, for the purposes of the maintenance, protection or enhancement of relevant environmental works which have been carried out in respect of the land, and
- (c) the covenant is made by an agreement (whether entered into before or after the day on which this Act is passed) which satisfies the requirements mentioned in subsection (6).

- (2) In this section—

a covenant to which this section applies is referred to as an “environmental covenant”;

an obligation, prohibition or restriction of a kind mentioned in subsection (1)(b) is referred to as a “qualifying provision” of an environmental covenant;

“relevant environmental works” means—

- (a) landscaping or other works to mitigate any adverse effects of the construction, maintenance or operation of any of the works authorised by this Act, or
- (b) works for the restoration of land affected by any of the works authorised by this Act,

and may include works involving the planting of trees and shrubs and the provision of replacement habitat for wild animals.

- (3) The Secretary of State or an authorised person may enforce—

- (a) a qualifying provision of an environmental covenant, and
- (b) any ancillary obligation, prohibition or restriction imposed by the covenant on the promisor,

against the promisor or persons deriving title from or under the promisor in respect of land (including Crown land) to which the covenant relates.

- (4) In subsection (3), “authorised person” means a person authorised by the Secretary of State (whether generally or in specified circumstances) to exercise the power under that subsection.

- (5) The reference in subsection (3)(b) to an ancillary obligation, prohibition or restriction imposed by an environmental covenant is a reference to an obligation, prohibition or restriction (other than one within subsection (1)(b)) which—

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- (a) relates to land or relevant environmental works to which the covenant relates, and
  - (b) is imposed—
    - (i) to enable works authorised by this Act or relevant environmental works to be maintained, or
    - (ii) for reasons of safety in connection with such works or the operation of Phase 2a of High Speed 2.
- (6) The agreement by which an environmental covenant is made must—
- (a) describe the qualifying provision or provisions of the covenant and the relevant environmental works to which the covenant relates,
  - (b) identify the land to which the covenant relates, and
  - (c) be entered into by an instrument executed as a deed.
- (7) Where, in the case of an environmental covenant, the Secretary of State authorises a person for the purposes of subsection (3), the Secretary of State must give notice of that to the person or persons against whom a qualifying provision of the covenant is enforceable at the time of the authorisation.
- (8) An environmental covenant is a local land charge.
- (9) Subsection (10) applies in the case of a breach of a qualifying provision of an environmental covenant by a person against whom the provision is enforceable.
- (10) A court may award exemplary damages against the person if the court thinks it appropriate to do so in the circumstances.
- (11) Exemplary damages may be awarded under subsection (10) whether or not another remedy is granted.

**Changes to legislation:**

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